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CURRENT TOPICS

Lord Mayor's Day: Legal Origins

ONE of the ceremonies that occur yearly in London in connection with the local government elections has a peculiar interest for lawyers. It is that in which the Lord Mayor of London lays claim, before the Lord Chief Justice and two judges of the King's Bench Division, wearing their black caps and full-bottomed wigs, to the rights and privileges of the City of London. On the occasion of the ceremony on 9th November this year LORD GODDARD provided some interesting information as to why 9th November was Lord Mayor's Day. He said a recital in s. iv of the Calendar Act, 1752, showed that the usual time of the annual meeting and assembly of the citizens of London for the admission and swearing of the Mayor had always been on the feast day of St. Simon and St. Jude, 28th October, and that the usual solemnity of presenting and swearing the Mayor in the Court of Exchequer had been on the day following. The Lord Mayor was presented and sworn in the Court of Exchequer because he was regarded as an accounting officer to the King. In 1751 the calendar was altered so that eleven days were omitted, but it was provided in the statute that the term of the Law Courts and, among other things, all ceremonies should be continued to be held on the same nominal days as before. In consequence, in the calendar which was attached to and formed part of the statute, saints' days kept the same dates in the new style as they had in the old, so that the feast of St. Simon and St. Jude still fell to be celebrated on 28th October, new style. In the same year, however, an Act was passed for the abbreviation of Michaelmas Law Term which, till that Act was passed, began on Michaelmas Day. It enacted that "for the ease and benefit of His Majesty's subjects" Michaelmas Term should thereafter begin on 2nd November. So provision had then to be made as to the presentation of the Lord Mayor to the court because it would not be sitting on 29th October. The difficulty was solved by enacting that he should be presented on 9th November. The 9th November was further confirmed by an Act in the following year.

Age of Magistrates

THE weight of the Lord Chancellor's opinion has been added to the popular demand for younger magistrates. In the evidence which he recently gave before the Royal Commission on Justices of the Peace he stated that he considered that the age of magistrates tended to be too great. He felt himself that he could not deal with children so well at sixty-one years of age as he could at forty-one, and thought that, while they should not have all younger magistrates, there must be a leavening of younger ones. Various half-hearted expedients had been tried to get rid of the older members of the bench by making a special list of those over a certain age who, whilst continuing to be justices, are not amongst those actively called upon to form a quorum and a court. This was in effect forming a class of honorary J.Ps., which was quite ineffective, for no one seemed to have had the courage to put anyone on this list any more than previous Chancellors had the courage compulsorily to retire those over a certain age. There were so many differences between the persons on the bench which made generalisations unsafe; here there was a sprightly seventy-six, and there a doddering sixty-nine. LORD JOWITT quoted as examples a bench with an average age of seventy-seven, with one magistrate nearly ninety; in one county, of eighteen active magistrates nine were over seventy and two over eighty. There can be little doubt that advancing age impairs the faculties, though this tendency is less marked than was the case fifty, or even twenty, years ago. Nowadays many a man of seventy is rightly regarded as at least the equal of men half his age in ability to do a hard day's mental or physical work with ability and skill. This applies to work on the Bench as it does to other walks of life. Perhaps it applies more to the Bench, for it would seem to be wrong to deprive the community of the ripe counsel of its elders, whether on the Bench or in the council chamber. All lawyers can recall judges and magistrates who died in harness at a ripe old age with their faculties unimpaired. Their name is legion. As for the ability of age to understand youth we would respectfully disagree with the Lord Chancellor and agree with a commentator in the *Local Government Chronicle*, of 9th November, who wrote suggesting that "age is not the factor which makes a justice suitable or unsuitable to deal with children; it is the amount of recent contact outside the circle of 'juvenile delinquents' which the justices have with children or young persons. Some elderly men and women have an admirable understanding of the younger generation through constant contact with them in their own homes or elsewhere."

Jury Injustices

AN article by Mr. T. S. DOUGLAS in the *Coventry Evening Telegraph* for 15th October contained a powerful plea for fair play for jurors. He wrote: "Jurors receive no expenses. Their payment is nothing in criminal cases, one shilling in civil actions or one guinea in the case of special jurors. These fees may have represented something two or three centuries ago. To-day we can say that for all practical purposes

jurors are unpaid. Even the men and women engaged in a long and complicated trial running to a week or more get nothing for their trouble and waste of time. They cannot seek compensation on the grounds that they have lost wages, have had to engage and pay someone to carry on their business in their absence or have lost business opportunities." Referring to the Departmental Committee which recommended drastic reforms in 1911 he said that not one of these had yet been adopted. The argument that no one should expect payment for fulfilling his normal duties as a citizen was met by the fact that the duty was not normal but selective, the number of exempted persons running into millions. Many of the exemptions needed re-examination, for instance, that which exempted a person with fewer than fifteen windows in his house. Another point was their comfort. Mr. Justice Humphreys once said: "They should have armchairs instead of hard seats and desk . . . and room to stretch their legs." In the matter of public expense he wrote: "In fact payment of reasonable expenses has been calculated at £40,000 a year—a small fraction of the 'profit' made by the courts every year." These injustices have been obvious for many years now to all who are connected with the administration of justice. They constitute a blot on an otherwise exemplary system, and time must be found to remove them.

Women's Change of Name

THE loosening of the marriage tie and the prospect of easier and cheaper divorce are not necessarily or obviously good things. It is, on the contrary, in the interests of all of us, singly and collectively, that respectability and decency should not be allowed to fall into contempt for want of a voice to speak on their behalf. It is against the interests of all of us that some writers for the press, the novel, the film and the stage tend to "cash in" on what they presume to be the popular taste by elevating the third party who breaks up a home into the status of a hero or heroine and making the deceived and wronged spouse appear to be contemptible. All divorce practitioners are aware that the exact contrary to this is almost invariably the case. An example of the depths of depravity and malice to which the aspirant for "romance" will descend is the frequent assumption by an unmarried associate of a married man of the name which she cannot assume with the blessing of the law. She does this usually in order to avoid the social consequences of her scandalous behaviour but always with the full knowledge of the pain and embarrassment which she thus causes to the lawful spouse. Everyone who has had experience of this type of case will applaud the statement by Mr. Commissioner TYNDALE, in the Divorce Court, on 14th November, that it was time that the change of name by deed poll by respondents in divorce cases should be stopped. In the case before him the wife had changed her name by deed poll to that of the co-respondent. That happened too often. He thought it lamentable that those people should be able to get a badge of respectability by changing their names in those circumstances. It could be done even more easily by advertising the change. The evil is common enough to warrant the introduction of a one clause bill making it an offence for a woman to assume the name of a married man with intent to pass as his wife.

Exchange Control

IT was to be expected that exchange control would be continued for some time after the end of the war. How long that period is to be it now seems impossible to estimate. Indeed, from the memorandum accompanying the text of the Exchange Control Bill, as well as from the Bill, to which no term is fixed, it may be inferred that the Government intend it to be a permanent feature of our law. For the present, however, there need be no serious controversy as to the need for a continuance of the controls in one form or another, and the future can be left to determine itself according to the issue of party conflict. This Bill of forty-four clauses and six schedules re-enacts the greater part of the existing Defence (Finance) Regulations, with a few omissions and additions. It provides for the abandonment of the power to require foreign securities owned by United Kingdom residents to be sold to the Treasury. Among the matters prohibited in the Bill are the disposal of foreign currency in any form, payments outside the sterling area in any form, unnecessary delay in securing payment for exports of goods or services, the issue or transfer of any securities or coupons to a foreign resident, and the import or export of notes, bills, insurance policies, and other documents. Like the present law, the Bill is an empowering measure, forbidding anybody to do certain things without permission or exemption from the Treasury, and Treasury Orders will be made under the powers conferred. Dealings in gold and foreign currency will be confined to "authorised dealers"; this does not necessarily mean much change, but it will no doubt be elucidated after discussion between the Treasury and the banks. The power to require foreign securities owned by United Kingdom residents to be sold to the Treasury is to be abandoned. The owner of bearer securities will be obliged to keep the certificates of title in the custody of an "authorised depository," and the depository will not, except with Treasury permission, part with the certificates or any coupon except for redemption, ordinary coupon payment, or to the order of another "authorised depository." Special arrangements are promised to meet the needs of brokers, solicitors and others who may require to hold such documents temporarily.

Scottish Legal Aid Proposals

THE report of the Committee on Legal Aid and Legal Advice in Scotland has recently been published by H.M. Stationery Office. The committee was appointed in November, 1945, and Mr. JOHN CAMERON, K.C., was chairman. Its proposals are based on a desire to build so far as possible on existing foundations, and to ensure the greatest possible measure of flexibility in the structure of the scheme. One reason which influenced the committee in this desire, it is pointed out, "lies in the ancient and honourable traditions of gratuitous representation of poor persons by counsel and solicitors in civil and criminal causes deriving from the Act 1424 cap. 45." It is stated that the traditional Scottish practice in criminal cases is at variance with the procedure recommended in the report of the Rushcliffe Committee. It is proposed that the right to receive assistance should be applicable to all persons accused in all criminal courts and at any stage. When an accused person pleads not guilty he should be entitled to receive a certificate of assistance on a declaration of means, indicative that his financial position is such that he would be entitled to receive the benefit of the scheme for legal aid. It is also recommended that the General Council of Solicitors should be responsible for the general administration of the scheme under the joint supervision of the Lord President of the Court of Session and the Lord Advocate, with an independent Advisory Committee. For the purposes of the scheme, Scotland should be divided into five areas, with headquarters at Edinburgh, Glasgow, Dundee, Aberdeen and Inverness. These areas should be divided into local or sub-areas, and it is considerd that existing Sheriff Court districts, either singly or in groups, would be suitable. The proposed rule-making authority for domestic administration of the scheme is the General Council, which should have power to make whole-time appointments of solicitors in each area to carry out the duty of giving legal advice. It is recommended that there should be two panels for solicitors, one for advice and one for litigation. Membership of these panels should be voluntary, with power to area committees to nominate practitioners if necessary. Six panels are suggested for counsel according to the different courts in which they serve.

The Accountant's Certificate Rules, 1946

BY now, solicitors practising in England and Wales will have received a copy of the long-presaged rules under s. 1 of the Solicitors Act, 1941. The requirement of that section that solicitors shall submit to the Council of The Law Society

once in every practice year an accountant's certificate, showing that the Solicitors' Accounts Rules have been complied with, has been in abeyance during the war years. With the return of many accountants to civil life, however, the section was brought into force on 10th August, 1946, by an order of the Lord Chancellor, and the Council of The Law Society have now prescribed in the new rules the procedure to be followed, the qualifications enabling an accountant to give a certificate, the form of the certificate and the circumstances in which the delivery of such a certificate is deemed unnecessary. The new rules, which came into force on 16th November, are printed elsewhere in this issue. They constitute a further welcome step in the policy of the Council aimed at minimising losses to the public as a result of inadequate or fraudulent book-keeping. Such losses were estimated before the war at about £64,000 a year. Although in the immediate future the annual inspection of books may well throw a heavier burden on the Compensation Fund set up in November, 1942, the Council are confident that within five years the position will be so stabilised that every admissible claim on the Fund will be effectively met, as has indeed been the case with all claims admitted up to the end of 1945. From its inception until that time, the Fund paid out a sum of approximately £150,000 in respect of losses coming to light since November, 1942.

Recent Decisions

In *Royston* v. *Cavey*, on 11th November (*The Times*, 12th November), the Court of Appeal (SCOTT, BUCKNILL and SOMERVELL, L.JJ.) held that, following *Adams* v. *Naylor* (1946), 62 T.L.R. 434, where a defendant was nominated in an action in which a Government department should have been sued but could not be owing to the rule that an action in tort would not lie against the Crown, if that defendant would not in fact have been the person liable (in the case before the court, as occupier) to the plaintiff, but was only nominated to take the place of the Crown, the person who in fact occupied the premises in question, the court had no jurisdiction to hear the claim. Scott, L.J., said that there was a very strong reason for legislation allowing actions of tort against the Crown. With the complexity of modern business carried on by Government departments and the great increase in commercial concerns owned by the Government, it was a crying evil that legislation to remedy the position should not be passed by Parliament.

In *Roberts* v. *Jones* on 12th November (*The Times*, 13th November), the Court of Appeal (SCOTT, BUCKNILL and SOMERVELL, L.JJ.) held that where a house was let at 7s. 6d. per week under the Housing (Rural Workers) Act, 1926, and in 1941 on passing out of that Act was let at 17s. 6d. per week, in arriving at what was the standard rent the court could not have regard to the time when 7s. 6d. was the rent, as it was not a free rent, and that as 17s. 6d. was the first rent charged after the house became free of the Housing Act and came within the Rent Restriction Acts, 17s. 6d. must be taken to be the standard rent within s. 12 of the 1920 Act.

In *Whittall* v. *Kirby*, on 13th November (p. 571 *post*, of this issue), a Divisional Court (LORD GODDARD, L.C.J. and LEWIS and OLIVER, JJ.) gave their reasons for deciding, on 6th November, that absence of previous convictions and the need for a motoring licence in order to carry on the livelihood of the accused were not special reasons for not imposing the penalty of disqualification from driving a motor vehicle, within s. 15 (2) of the Road Traffic Act, 1930. The court said that had Parliament intended that special consideration should be shown to professional drivers or first offenders they would have so provided. A "special reason" within the exception was a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence was not a "special reason" within the exception. One might give as an illustration a driver exceeding the speed limit becuse he had suddenly been called to attend a dying relative, or a doctor going to an urgent call. Lord Goddard expressed the hope that in future no court would regard the offence of dangerous driving as one suitable for the application of the Probation of Offenders Act unless in the most exceptional circumstances.

DIVORCE LAW AND PRACTICE

RECENT CHANGES IN PRACTICE AND PROCEDURE

IN the series of articles under this heading it is intended to consider very briefly a few of the more important recent cases and to indicate their effect upon previous decisions, and also to refer to the changes from time to time in substantive or procedural law which are made either by Statute Law or by Rules and Orders in so far as these affect practice and procedure in Divorce administration. In view of the growing extension of jurisdiction in divorce matters, both as regards the High Court and assizes, by the appointment of special commissioners, it is hoped that the information contained here, restricted though it must inevitably be, will prove of value to the practising members of the profession.

In this article, however, it is intended only to refer to certain changes in practice and procedure, and to deal with them as follows :—

(1) *Decree absolute.*—As suggested in the First Interim Report of the Committee on Procedure in Matrimonial Causes, presided over by Denning, J. (Cmd. 6881), the period of six months which it was provided by subs. (i) of s. 183 of the Supreme Court of Judicature (Consolidation) Act, 1925, should elapse between the pronouncement of a decree nisi and the decree absolute in the case of every decree for a divorce or nullity of marriage has been reduced to a period of six weeks as from 6th August last (The Matrimonial Causes (Decree Absolute) General Order, 1946) (see W.N., 5th October). Thus, by this General Order has been achieved a reduction to this comparatively short period of six weeks from the period of three months introduced by s. 7 of the Matrimonial Causes Act, 1860, later increased to six months by s. 3 of the Matrimonial Causes Act, 1866, the provisions of which were extended from a decree for divorce so as to include a decree for nullity by s. 1 of the Matrimonial Causes Act, 1873.

(2) *Application to make absolute a decree nisi.*—As a corollary to the provision referred to above an amendment has been made as from the date referred to in the procedure for the application by a spouse to make absolute a decree nisi pronounced in his or her favour. By sub-r. (1) of r. 2 of the Matrimonial Causes (Amendment) (No. 2) Rules, 1946, a new para. (1) of r. 40 has been substituted for the existing para. (1) of the corresponding rule in the Matrimonial Causes Rules, 1944, which provides for such an application to be made by the filing by the spouse concerned of a notice of application in accordance with the Form 30, in App. II, on any day after the expiration of the six weeks period referred to above for the pronouncement of the decree absolute. This amendment has the effect of transferring to the officer of the registry where the cause is proceeding the duty of searching the court minutes, and of being satisfied that no appearance has been entered or affidavit filed by or on behalf of any person wishing to show cause against the decree nisi being made absolute. In this connection it may be noticed that the fee for filing such a notice of application has now been fixed at ten shillings, in substitution for Fee No. 78A, in Sched. I, of the Supreme Court Fees Order, 1930, by cl. 1 of the Supreme Court Fees (Amendment) Order, 1946 (see W.N., 5th October).

(3) *Special Commissioners.*—It may be noted that by the Matrimonial Causes (Special Commission) Order, 1946, dated 9th October, the jurisdiction of a Special Commissioner for

the trial of matrimonial causes is stated to be, subject to Rules of Court, to try to determine undefended petitions for divorce in which no grounds other than adultery, cruelty or desertion are alleged, except petitions in which the petitioner claims damages against a co-respondent (see W.N., 2nd November). In this connection reference may be made to the definition of "undefended cause," which has been substituted by r. 2 of the Matrimonial Causes (Amendment) Rules, 1946, dated 24th April, for the definition contained in r. 1 (3) of the Matrimonial Causes Rules, 1944. This definition now reads: "undefended cause" means a matrimonial cause in which no answer has been filed or in which all the answers filed have been struck out, but does not include a cause in which relief is sought under s. 176 (*d*) of the principal Act, or s. 7 (i) (*b*) of the Act of 1937 (both these sections refer to petitions for divorce or nullity on the ground of unsoundness of mind).

(4) *Assizes.*—Reference may be made to the provisions of the Assizes (Matrimonial Causes) Order, 1946, providing that special facilities shall be available for the hearing of Matrimonial Causes at Assizes (see the order and explanatory note in the W.N. for 2nd November). It may be noted that under the Assizes (Matrimonial Causes) Provisional Order, 1946, dated 10th July, arrangements have been made in this respect for the hearing of matrimonial causes on the Northern, North-eastern and Midland Circuits for the current Autumn Assizes.

(5) *Jurisdiction of the Registrar.*—It may be noted that an important extension of jurisdiction has been granted to a registrar by r. 58A, which is now inserted after r. 58 in the Matrimonial Causes Rules, 1944, by r. 7 of the Matrimonial Causes (Amendment) Rules, 1946, dated 24th April, in the hearing of applications under s. 17 of the Married Women's Property Act, 1882 (see W.N., 18th May). This rule now provides that without prejudice to the exercise of any jurisdiction and powers conferred on him by virtue of ord. 54, r. 12, of the Rules of the Supreme Court, 1883, a registrar may exercise all the jurisdiction and powers conferred upon a judge of the Supreme Court by this section. This amendment of the rules now brings the jurisdiction of a registrar in this respect into line with those of a Master of the King's Bench Division who, by the insertion into ord. 54 of r. 12 (*a*), by R.S.C. (No. 3), 1937, has the power to make an order under the section himself instead of, until the alteration of the rules, only the power to make a report, the court itself alone having had the jurisdiction to make an order (see *Hichens* v. *Hichens* [1945] P. 23). Thus, this rule now renders nugatory the decision in *Wood* v. *Wood & White* (1889), 14 P.D. 157, where it was held that the registrar had no jurisdiction to make such an order under the section but his powers were limited to an inquiry and report as to the property in the articles in dispute. It may also be noted that in the case of *Hichens*, *supra*, it has been held that an inquiry which has been begun under the section while the parties are husband and wife, may be continued notwithstanding the dissolution of the marriage by decree absolute, and the inquiry may be held in spite of the granting of a decree for judicial separation against one of the parties (see *Phillips* v. *Phillips* (1888), 13 P.D. 220).

(6) *Right of co-respondent to be heard as to costs.*—An important amendment of r. 33, para. (1), of the Matrimonial Causes Rules, 1944, has been made by r. 5 of the Matrimonial Causes (Amendment) Rules, 1946, *supra*, which adds thereto the following proviso: "(i) no bill of costs not directly referable to a decree nisi or decree absolute shall be taxed against a co-respondent who has appeared, unless notice has been given to him of the intention to apply for an order that such costs should be costs in the cause; and (ii) a co-respondent (whether he has appeared or not) may, before the expiration of the period mentioned in the order for payment of the costs by him after taxation, apply to a judge to discharge the order making such costs costs in the cause, so however that a co-respondent who has not appeared in the suit shall first obtain leave to enter an appearance for the purpose, which leave may be sought in the application to discharge the order." It will be remembered that the original para. (1) of this rule merely provided that "after entering an appearance a respondent or co-respondent may, without filing an answer, be heard in respect of any question as to costs . . ." and the application of this paragraph was considered by the Court of Appeal in *Fenston* v. *Fenston* [1946] P. 70, where the question arose as to the liability of the co-respondent to a husband's petition for divorce to pay the costs of certain summonses which had been taken out by the husband and the wife respectively in connection with the custody of the child of the marriage where the co-respondent had supported the wife's application by means of an affidavit, although he was not a party to either summons. There the court held that an order for the payment of both the husband's and the wife's costs of the summonses and of the appeal, although he was not a respondent thereto, could be properly made in the circumstances against the co-respondent, who had entered an appearance and who had married the wife after the decree nisi had been made absolute, the wording of the decree nisi which "condemned the co-respondent in the costs incurred and to be incurred on behalf of the said petitioner in this cause" being correctly interpreted by the practice of the Divorce Division as covering more than the cost of the petition itself and extending to such future costs as the judge in the exercise of his discretion should order to be costs in the cause. In coming to this decision, however, certain observations were made by Lord Greene, M.R., as to (i) the form of the order for costs in the decree nisi and (ii) the desirability of notice being given to a co-respondent by any party to an application who intended to ask for an order for costs against him, a right to such a notice not being limited to a case of a co-respondent who had entered an appearance. The amendment of the rule referred to above has now given effect to the view of the court as expressed in this judgment, and with regard to the wording of a decree nisi this was duly amended by a Practice Note, issued by the Senior Registrar, dated the 5th February, 1946, as directed by the President, and is now in the form proposed at the end of the judgment.

(7) *Second Interim Report of the Denning Committee.*—A summary of the recommendations contained in the Second Interim Report of the Denning Committee was given in our issue of 16th November (90 SOL. J. 549). It is not, of course, possible to examine this report here, or the changes in jurisdiction and procedure which it recommends, but it is submitted that a careful study of it will be of value to practitioners.

CRIMINAL LAW AND PRACTICE

DENAZIFICATION AND "AUTREFOIS ACQUIT"

ONE of the lesser novelties of the aftermath of war is the process which has come to be called by the ugly word "denazification." Some fears have been expressed that the application of this procedure to the cases of men like Papen, Schacht and Fritzsche, who have been acquitted by one tribunal, might tend to lessen the authority of the acquitting tribunal and also infringe the rule "*nemo debet bis vexari.*" *Prima facie* the answer to both these suggestions that will occur to the mind of the practising lawyer is that it all depends on what charge the accused is asked to meet. If the charge is different from that on which the accused was acquitted, there can result neither a lessening of the acquitting tribunal's authority, nor an infringement of the rule of *autrefois acquit*. This view is borne out by a letter from Dr. Mosheim to the *Daily Telegraph* of 11th October. The following quotation from his letter puts the point exactly: "Whereas the International Military Tribunal was established 'for the just and prompt trial and punishment of the major war criminals of the European Axis' who had committed crimes against peace, against laws or customs of war, or against humanity,

the jurisdiction of the De-Nazification Court lies in a different sphere. That follows clearly from the 'Law of Liberation from Nazism and Militarism.' This law, which is operative in the three 'Laender' of the U.S. zone of occupation, is based on Directive No. 24 of the Control Council for Germany. The aim of the law is to purge the public, economic and cultural life in Germany from prominent Nazis and militarists and their influential supporters. This should be done as a means of safeguarding the country's real democratic life during the time of reconstruction. . . . The utmost the De-Nazification Court can do is to issue an order against the person whom the judges deem it necessary, after a fair and exhaustive hearing, to be employed for ten years in a labour camp on reconstruction and restitution work. In addition, judgment can be made against the individual concerned to pay damages to a restitution fund and certain civic rights can be withdrawn from him. The whole amounts, therefore, more or less to an administrative measure. . . . The [Nuremberg] judgment passed on them did not leave any doubt whatsoever that the three were either potential Nazis or militarists. The acquittal from criminal charges makes it imperative, therefore, to put a stop to any further activities by them during the transitional period." The imposition of a penalty involving service in a labour camp, imposed by the State after an inquiry by a court, makes it clear that the matter is criminal, and not administrative, as the writer states, and as the charge is different from the charges at Nuremberg, the rule of *autrefois acquit* cannot apply.

COMPANY LAW AND PRACTICE

DEFECTS IN THE APPOINTMENT AND QUALIFICATION OF DIRECTORS—II

LAST week I mentioned the usual provisions of articles of association relating to the appointment of directors and their qualification shares, and also some of the statutory requirements which apply to these matters. I did so, as it may be remembered, with a view to considering the scope and effect of s. 143 of the Companies Act, 1929, which provides that "the acts of a director . . . shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification," and of the usual article which says very much the same thing, though in more elaborate terms —see, for example, cl. 88 of the 1929 Table A.

Before coming to some of the reported decisions where it has been sought to invoke such a provision in a case where the appointment of a director has been irregular, two observations of a general nature may be made. First, the section or article applies not only to outsiders dealing *bona fide* with the company, but also between members of the company and the company itself (see *Briton Medical General & Life Association* v. *Jones* (1889), 61 L.T. 384; *Dawson* v. *African Consolidated Land Co.* [1898] 1 Ch. 6). Secondly, the validating effect of the section or article continues notwithstanding that the facts constituting the defect in the appointment or qualification of the director are known, provided that the knowledge of the defect is not present to the mind of the person to whom it is material to know it, and who relies on the provisions of the section or article (*British Asbestos Co., Ltd.* v. *Boyd* [1903] 2 Ch. 439): that is to say, the phrase "notwithstanding any defect that may afterwards be discovered," means not that the facts are afterwards discovered, but that the defect is afterwards discovered. As we shall see, the Court of Appeal has held (*Kanssen* v. *Rialto (West End), Ltd.* [1944] Ch. 346, the point being left open by the House of Lords—[1946] A.C. 459, at p. 473) that the section and article apply where one party to a transaction is unaware of the defect, though the other parties or some of them may be aware of it.

I want now to mention some of the cases in which this provision has been successfully invoked. The first of these is *Briton Medical General & Life Association* v. *Jones, supra.* There the defendant was resisting the payment of a call on his shares on the ground that the call was invalid, the directors who made it not having been validly appointed. The directors had in fact been appointed at a general meeting of the company, but this meeting had been convened by a thirteen days' notice, whereas by the regulations of the company fourteen days' notice of the meeting should have been given. There was therefore a defect in their appointment, but the existence of the defect was not discovered until after the call had been made. Section 67 of the Companies Act, 1862, provides that all appointments of directors shall be deemed to be valid and all acts done by such directors shall be valid notwithstanding any defect that may afterwards be discovered in their appointments or qualifications; and the court held that the call was good, having been made by persons who were *de facto* directors, although there was a defect in their appointment which was afterwards discovered.

In *Dawson* v. *African Consolidated Land Co., supra,* the articles of association contained a similar provision validating the acts of a director notwithstanding the subsequent discovery of a defect in his appointment or that he was disqualified. The question there was again whether a call had been validly made, the objection being that one of the directors was not a properly appointed director, with the result that the board making the call was below the minimum number required by the articles. The director in question had originally been properly appointed at a time when he held the necessary qualification shares, but he had later transferred all his shares and consequently ceased to be a director by virtue of the provisions of an article which provided for the vacation of office by a director who ceased to hold the necessary number of qualification shares. Within less than a week, however, he acquired other shares sufficient for a qualification; and, though never formally reappointed, continued to act as a director. The fact that he had ceased to hold office and should have been reappointed was, apparently, never appreciated; and the Court of Appeal held that the article in question validated his acts and cured the irregularity in his appointment, Lindley, M.R., pointing out that the other directors had power to appoint the director who had vacated office to fill the casual vacancy once he had again acquired qualification shares, and though they did not go through the form of passing a resolution to appoint him, they allowed him to act as a director, and acted with him as a duly appointed director. It will be recalled that s. 141 (3) and (4) of the Companies Act now provides for the vacation of office by a director who ceases to hold his qualification shares, and that a person so vacating office shall not be capable of being reappointed until he has obtained his qualification; but I do not think these provisions affect the decision in the case I have just mentioned, where the qualification shares have been reacquired, so that the director is capable of reappointment, and the defect is in the method of appointment.

The next case is *British Asbestos Co., Ltd.* v. *Boyd, supra.* There the articles of association provided that a director should vacate office if, *inter alia,* he accepted or held any other office under the company except that of managing director. One of three directors, B, was appointed secretary and consequently, though this was never realised, vacated his directorship; he continued to act as director. One of the other directors then resigned and B and the third director, C, continued to act. B resigned his office as secretary and was appointed managing director by a resolution of himself and C, and subsequently B and C elected an additional director. All parties had acted in good faith, without knowledge of the fact that B ceased to be a director when he became secretary; and Farwell, J., held that the acts of B and C were good by virtue of s. 67 of the 1862 Act and the provisions of an article which was in the form of cl. 88 of the 1929 Table A.

In *Channel Collieries Trust, Ltd.* v. *Dover, etc., Railway Co.* [1914] 2 Ch. 506, the company was subject to the Companies Clauses Consolidation Act, 1845, s. 99 of which makes the same provision for validating the acts of *de facto* directors

as is now contained in cl. 88 of Table A. There the holding of qualification shares was a condition precedent to the appointment of a director; the board was reduced in number to one director, Z, and he, acting under the powers given him by the constitution of the company, appointed two directors, neither of whom held the necessary qualification shares; and at a board meeting Z and the two appointees, acting in the *bona fide* belief that the appointment was good, subject to the acquisition of the qualification shares, forthwith proceeded to allot the necessary shares to the two appointees. It was held by the Court of Appeal that though they had not been duly appointed because at the time of appointment they did not hold their qualification shares, the irregular allotment of the qualification shares was an act done by *de facto* directors which was validated by the provisions of s. 99 of the 1845 Act. There was no dispute as to the good faith of all parties concerned, and the court adopted the view of Farwell, J., in *British Asbestos Co.* v. *Boyd*, *supra*, that, if there is good faith, the mere fact that the person claiming the benefit of the provision had notice of the existence of the facts which led to the disability is not sufficient to disentitle him to rely upon it if he can honestly say that he was not aware of the defect, not aware, that is, of the consequences of the facts known to him. The background of the whole matter was described by Swinfen Eady, L.J., in these words: "Common sense really requires that there shall be some provision giving legal effect to acts in respect of which there is a technical informality because some slip has been made, where the acts have been done in good faith and where the slip has occurred because the parties have not had present to their minds the legal difficulties in the way of doing what they honestly think they are entitled to do."

So much for some of the cases—and they are, I think, the principal ones—where provisions similar to those in s. 143 of the 1929 Act have been held to validate the acts of *de facto* directors in regard to whose appointment there had been some irregularity or defect. There are two decisions to which I want to refer where such provisions have been held to be of no application. The first is *Tyne Mutual Steamship Insurance Association* v. *Brown* (1896), 74 L.T. 283. There under the articles of the company the directors retired annually on a specified date. The directors in office continued to act after this date, although they had not been re-elected, and made calls on the shareholders, although it was pointed out to them that, not having been re-elected, they had no authority to do so. It was held that s. 67 of the 1862 Act and the usual article did not apply, this being a case not of a defect in appointment, but of no appointment at all. It should be observed, however, that on the facts, even if there had been an appointment but a defective one, the section and article would still not have helped, as the directors were aware of the defect at the time they purported to make the calls; *bona fides* is essential on the part of the persons relying on these validating provisions, and there can be no *bona fides* where they know of the defect in appointment.

The recent decision of the House of Lords in *Morris* v. *Kanssen* [1946] A.C. 459, has established that s. 143 of the 1929 Act and an article in the form of cl. 88 of Table A have no application where it is a case not of an appointment in respect of which there has been some slip or irregularity, but of no appointment at all. The facts were somewhat complicated, but it will, I think, suffice for present purposes to say that the claimant was relying on the section and the article to validate the issue to him of shares by two alleged directors, one of whom had never been appointed at all, having assumed office without any right or title to do so, and the other of whom had ceased to be a director under the provisions of the company's articles for retirement, and had not been re-elected. Lord Simonds said this: "There is . . . a vital distinction between (*a*) an appointment in which there is a defect or, in other words, a defective appointment, and (*b*) no appointment at all. In the first case it is implied that some act is done which purports to be an appointment, but is by reason of some defect inadequate for the purpose; in the second case there is not a defect, there is no act at all. The section does not say that the acts of a person acting as a director shall be valid notwithstanding that it is afterwards discovered that he was not appointed a director . . . It would, I think, be doing violence to plain language to construe the section as covering a case in which there has been no genuine attempt to appoint at all. These observations apply equally where the term of office has expired, but he nevertheless continues to act as a director, and where the office has been from the outset usurped without the colour of authority."

I should like to say more about the application of this decision to particular facts, having regard to the earlier cases which I have mentioned, but my space is up for this week, and I must leave further discussion to a later article. At the same time it will be convenient to refer to the judgment in the same case of the Court of Appeal, where some important points were decided which the House of Lords found it unnecessary to deal with.

A CONVEYANCER'S DIARY

WAR DAMAGE PAYMENTS

I HAVE had two inquiries recently in regard to the destination of payments to be made under the War Damage Act, 1943, in respect of chattels, where the owner of the chattels had died before payment. I imagine that they are instigated by the recent announcement that deferred payments of that kind are to be made next summer, together with a bonus in some cases. At the risk of some repetition, therefore, it may be convenient here to refer to the rules on this subject, both as regards land and chattels.

Under Part I of the Act payments in respect of war damage to land fall into two classes, payments of cost of works (and the sub-class of temporary works payments) and value payments. Under s. 9 of the Act the right to receive a payment of cost of works or a temporary works payment is to vest in the person by whom the cost of executing the works is incurred. There seem to be some difficulties in the machinery in respect of these classes of payments; I heard recently of a case where a purchaser of buildings was offered, at the date of his contract, a document from the War Damage Commission stating that it was admitted that war damage had occurred to each of the buildings concerned and apparently inviting a claim for payment when the repairs were done. The buildings were somewhat old and not by any means in perfect condition. Some ceilings were down and some others were cracked. The purchaser wrote to the vendor's solicitors inquiring what precise damage had been reported to the Commission and was told that no particulars of it had been supplied to them. He is now in the position, it seems, of having to show the Commission that any particular item of repairs which he effects is necessitated by war damage, but cannot prove this of his own knowledge as he was not in possession; on the other hand the vendor, who is most disobliging, will no doubt refuse to give any assistance whatever. So far as I can see, there is nothing in the Act enabling the purchaser to compel the vendor to supply the necessary information, and he can only hope that the Commission will treat him reasonably. The only way in which questions can arise in regard to cost of works payments or temporary works payments under a will or intestacy seems to be if the person incurring the cost dies before payment is actually received. In such a case the right to receive a payment would form part of his general personal estate and would not pass specifically unless dealt with by will in express terms.

A value payment, however, stands on quite a different footing. It vests in the owner of the fee simple, if that was

the only proprietary interest, or in the owners of the various proprietary interests proportionately to those interests, as at the moment immediately before the occurrence of the war damage. The right to receive such a payment is, of course, transmissible by assignment or by operation of law as a personal right, subject to the very strict control over assignments which is exercised under s. 23 of the Act. Being a personal right, it would not normally pass to a devisee. But it is provided by s. 29 of the Act that " a devise or bequest of an interest in, or in the proceeds of sale of, land which sustains war damage in respect of which a value payment is made . . . contained in a testamentary disposition executed before the material time, shall, in the absence of any contrary intention expressed therein or in any other testamentary disposition made by the testator, have effect as if it had included a bequest of any such payment, or of any part of such payment, to which the testator might become entitled in respect of that interest." " The material time " is defined in s. 12 (2) of the Act as meaning the time immediately before the occurrence of the war damage. It follows that if a testator is killed when his house is destroyed, and if by his will he has left his house to A, the devisee will take the site and the ruin and also the value payment under s. 29. The same will be true if the testator dies after the war damage leaving a similar will made before its occurrence. But if the house is first destroyed and the testator dies at a later date, having in the meantime made a new will dealing with the site, the value payment will not pass to the devisee of the site.

In Part II of the Act, which deals with chattels, there is no section corresponding to s. 29. Moreover the schemes created under Part II are schemes of insurance, whereas the scheme of Part I does not rest upon the principles or practice of insurance. There is also another distinction. Realty cannot be destroyed entirely; if a house is wrecked the realty is unaffected. A house is a very small incident of the real estate, which consists of the surface of the site, the superincumbent column of air *usque ad caelum* and the depths beneath *usque ad inferos*. Chattels, on the other hand, can be and frequently are completely destroyed. It is true, I suppose, in most cases that wreckage of some kind remains, but it must often be true to say that the chattel as such has ceased to exist at all.

Where insured chattels are destroyed, the person primarily entitled to receive the compensation money is the policy holder or his personal representative. The difficulty is as to the beneficial destination of that money. Let us suppose that H and W, a husband and wife, are living in a house each owning half of the furniture; the house collapses owing to enemy action and both are killed, W surviving somewhat longer than H. Each has left his or her personal chattels to the other, with a provision that if the primary legatee dies first, their son S shall take instead. The result then is that on the death of H, which occurs first, his chattels—so far as they are undamaged—pass to W; those of his chattels which survive but are damaged also pass to W; but those of them which are destroyed do not so pass because W (or her personal representative) is unable to prove that the destroyed chattels were in existence one moment after the death of H, so that it can never be shown that his will operated upon them. So far as the chattels still exist, although damaged, the compensation money in respect of them is held by the personal representatives of H on trust for W. The compensation money in respect of the destroyed chattels, however, remains part of the residuary estate of H and does not pass under the specific gift in his will of his chattels. Upon the immediately subsequent death of W, she is owner of the whole of her own furniture, damaged and undamaged, and also the damaged and undamaged furniture formerly belonging to H. She also has a right to receive compensation money in respect of the damaged furniture of both herself and H. H having predeceased her, the gift to S takes effect; he takes the whole of both lots of chattels, damaged and undamaged, and the compensation money in respect of both lots of damaged chattels. The compensation for W's destroyed chattels will be part of her residuary personalty. These conclusions appear to follow from *Re Mercer* (1944), 88 SOL. J. 298, which dealt with a case of war damage, and from *Durrant* v. *Friend* (1852), 5 De G. & Sm. 343, cited in *Re Mercer* by Morton, J. *Durrant* v. *Friend* was a case where a testator and his furniture both went down in the same ship and it was held that the legatee of the furniture did not take the insurance moneys. The Vice-Chancellor indicated that if the legatee could have shown that the furniture survived the testator, the testator's personal representatives would have held the policy money on trust for the legatee, but said that as the continued existence of the furniture after the testator's death could not be shown, the legatee could not establish his title.

LANDLORD AND TENANT NOTEBOOK

FITNESS OF FURNISHED HOUSES

IT is curious that, though there have been a good number of cases tending to define the nature and scope of the warranty and condition of fitness implied in tenancies of furnished premises, neither can be said to be completely defined yet. Even such obvious questions as what is meant by " fit " and what by " furnished " have not been dealt with.

On the former point, it is, of course, well established that fitness for habitation, or occupation, is what is meant; but it has often struck me as strange that practically all the reported cases deal with complaints as to infection and infestation. It has been either germs or pests that have occasioned litigation, and there has been little or no attempt to apply the lucid reasoning of Lord Atkin in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.), which left undecided whether a broken window-sash could constitute unfitness for habitation for Housing Act purposes, and in *Summers* v. *Salford Corporation* [1943] A.C. 283, which decided that it could. As regards furnished premises, one can only say that the point was left undecided in *Maclean* v. *Currie* (1884), Cab. and El. 361, in which the actual collapse of some ceilings and the apprehended collapse of others gave rise to the proceedings; in which, however, the tenant failed because he was unable to prove unfitness at the commencement of the tenancy. At some time in 1939 or 1940, I remember that our " County Court Letter " recorded a case in which a judge held that premises were unfit because no black-out was provided; it is a pity that no appeal ensued, for we would then at last have had authority showing whether matters other than those connected with disease or dis-ease were within the scope.

In the recent county court case of *H. D. B. and A. Coventry* v. *Walker*, reported in our issue of 2nd November (90 SOL. J. 525), the tenant's defence failed for the same reason as that which decided *Maclean* v. *Currie*. But here again it was a question of noxious animals, some novelty being perhaps afforded by the fact that they were fleas; without laying claim to any special knowledge of pestology, I believe expert evidence might have provided the plaintiff with a complete answer to the defence if he could have shown that the property was vacant some twenty-four hours before the commencement of the tenancy, fleas being true parasites.

While at first one is tempted to subscribe to the proposition that, despite the absence of direct authority, there is no reason why " fitness " should not be interpreted on the lines of the definitions contained in the Landlord and Tenant (War Damage) Act, 1939, s. 29, the underlying principle of which appears to be that the common purpose of the parties must be the paramount consideration, it is to be expected that such an argument would be met by examination of the history of the implied obligation. For it does constitute an exception to the rule " the tenant takes premises as they are. Let him beware " (*Hart* v. *Windsor* (1843),

12 M. & W. 68), and it is therefore pertinent to inquire why such a deviation has been sanctioned.

It will then be found that in *Smith* v. *Marrable* (1843), 11 M. & W. 5, Lord Abinger expressed himself in these terms: "No authorities are wanted, and the case is one which *common sense* enables us to decide"; but also in these: "A man who lets a *ready-furnished* house, surely does so under the implied condition or obligation that the house is in a fit state to be inhabited." From this, especially the "ready-furnished," it is possible to argue that the real reason for the exception lies in the difficulty of examining and surveying a furnished house. If that be so, it may well be that the county court black-out decision to which I referred earlier may have been wrongly decided. On the other hand, when one considers that while Lord Abinger professed to be guided by common sense alone, he also stated that he was glad that authorities had been found to support his view; that these authorities were mentioned in the judgment of his colleague, Parke, B.; that they were authorities which were wide enough to warrant the proposition that the implied obligation extended to any letting for immediate occupation, with or without furniture; that they have since been discredited, the learned baron himself having speedily recanted (in *Hart* v. *Windsor, supra*); that the principle has been applied to such a defect as absence of a proper water supply (*Chester* v. *Powell* (1885), 52 L.T. 722) —one is driven to the conclusion that common sense is an inadequate guide if the underlying idea is that one who takes an unfurnished house can, and one who takes a furnished house cannot, satisfy himself of its condition beforehand. In *Wilson* v. *Finch-Hatton* (1877), 2 Ex. D. 336, in which a house in Belgravia was found to be unfit for occupation by reason of defective drainage, the judgments proceed on the principle that the court was to give effect to the intention of the parties inferred from circumstances, the most important of which was "it is clear that she the tenant intends to have immediate possession of the house . . . abundantly clear that it was in the contemplation of both parties that the house should be ready for her entry and for occupation by her" as Kelly, C.B., put it. True, a little support for the theory that the exception is based on inability to inspect might be found in the learned chief baron's opening remarks, describing the tenant as "a lady, who generally resides in the country, about to come to town for the season"; but when one considers that it was an unpleasant smell, noticed as soon as she entered, that put her on her inquiry, one cannot resist the conclusion that the tenant in these cases is given a right to rely on the house being fit for habitation whether he has or has not any opportunity of inspecting it.

The last-mentioned case disposed, incidentally, of the suggestion that the doctrine was limited to defects in the furniture itself (indeed, some of the noxious insects in *Smith* v. *Marrable* had been found in the structure), and more recently, *Bentley Bros.* v. *Metcalfe & Co.* [1906] 2 K.B. 548 (C.A.) has shown that apart from the law of landlord and tenant a warranty of fitness might be implied as respects furniture let with a house.

But we are still without direct authority on whether "fitness for occupation" covers more than security from illness or discomfort, and when it comes to a question of whether the house has to be fully furnished before the exception will apply, one can only say that there appears to be no authority on this point at all. Before the days of rent control it was, of course, uncommon for the courts to be troubled with nice questions of degree and proportion, but my own view is that the inference drawn in *Wilson* v. *Finch-Hatton* and *Smith* v. *Marrable* is unlikely to be drawn in, say, a case in which a house contained "built-in" furniture of the *Gray* v. *Fidler* [1943] K.B. 694 and *Property Holding Co., Ltd.* v. *Mischeff* (1946), 62 T.L.R. 568 (C.A.) (90 SOL. J. 454) type.

FURNISHED HOUSES RENT TRIBUNALS: NOTICE OF HEARING

Under s. 2 (2) of the Furnished Houses (Rent Control) Act, 1946, parties to referred contracts are entitled to a hearing; and under r. 6 (1) of the Furnished Houses (Rent Control) Regulations, 1946, each party is entitled to "not less than seven clear days' notice in writing of the time and place at which the parties will be heard."

Rule 4, providing for notices by which contracts are referred, concludes with "may be posted to the Tribunal, in which case it shall be deemed to have reached the Tribunal on the day when it would be delivered in the ordinary course of post." There is no corresponding provision in the case of notices of hearings, but it is submitted that the ordinary rule that a notice is given when it reaches the recipient applies.

Attention is drawn to r. 6 (1) because cases have occurred in which short notice has been given, and practitioners whose clients are inconvenienced thereby may like to be reminded of their rights and also of the interpretation of "clear days." There are numerous authorities, from *Mitchell* v. *Forster* (1840), 12 Ad. & El. 472 to *R.* v. *Turner* [1910] 1 K.B. 436, to show that the effect is that the number of days indicated must intervene between the receipt of the notice and the event notified.

TO-DAY AND YESTERDAY

November 18.—At the time of the dissolution of the monasteries Gray's Inn was owned by Shene Priory, to which the Society paid a rent of £6 13s. 4d. a year. Afterwards the Crown seized the property, and the accounts of the Treasurer made on 18th November, 1540, show that the rent was then paid to the King's use.

November 19.—On 19th November, 1590, Nicholas Fuller was chosen joint Treasurer of Gray's Inn with Edmund Pooley. Thirty years later he came to a sad end. Thomas Lad, a Yarmouth merchant, and Richard Mansel, a preacher, were imprisoned by the Court of High Commission, an inquisitorial court chiefly concerned in cases of misconduct and immorality, both by the clergy and laity, and in proceedings in respect of Recusancy and Nonconformity. Brought up on a writ of habeas corpus, they were represented by Fuller, who pleaded so zealously that Archbishop Bancroft committed him to prison. "Fuller's friends complained that only by the colour of right and the vigour of might he was cast into prison . . . Many were his petitions to the King for his enlargement, whom the Archbishop had preacquainted with the case, representing him to the King as the champion of Nonconformists; so that there he lay and died in prison. However, he left behind him the reputation of an honest man and a plentiful estate to his family." Prison life carried him off in less than six months. His death was in May, 1620.

November 20.—On 20th November, 1593, the Benchers of Gray's Inn, driven from London by the plague raging there, met at St. Albans. The only business they transacted was to elect Nicholas Potts as Reader. The Inner Temple had also fled to St. Albans.

November 21.—On 21st November, 1600, the Gray's Inn Benchers ordered that the clockmaker should be paid for the new clock a sum not exceeding 40s. It was also ordered that no member in commons should go out of commons till he had paid the Steward all that he owed for commons or other duties.

November 22.—The Inns of Court appointed barristers from among their members to act as Readers in the Inns of Chancery subordinate to them. On 22nd November, 1602, Gray's Inn appointed Abraham Bowne Reader for Barnard's Inn and William Cobbe Reader for Staple Inn.

November 23.—On 23rd November, 1618, the Gray's Inn Benchers ordered that "all the gentlemen who have not received the Communion this term and have been in commons on repasters this term shall pay 3s. 4d. a piece . . . and six gentlemen to be convented before the Masters of the Bench that have not received the Communion this term nor the last." One Robinson was appointed "sole baker domodo se bene gessint and if he misbehave himself in serving of bread then the Ancients in commons have power to put him out, having reasonable warning given him if any mischance should happen."

November 24.—On 24th November, 1624, Peter Phesant was chosen Reader of Gray's Inn for the following summer. His father, another Peter Phesant, had been a Bencher of the Inn and Attorney-General in the Northern Parts. In 1640 he became a serjeant-at-law, and in the following year he acted as commissioner of assize in Nottinghamshire. The struggle between King and Parliament was then growing in intensity, and in 1642, when Sir Edward Herbert, the Attorney-General, was impeached by the Commons for his action against the five Members of Parliament who had displeased Charles, he excused himself on the ground of ill-health from appearing for the defence. On the same ground he resigned the office of Recorder of London in May, 1643, less than a month after being elected to it. He became a judge of the Common Pleas in 1645. After the King's execution he agreed to act still on condition that the fundamental laws were not abolished; but he died in October, 1649.

BLIND MAGISTRATE

Lord Jowitt, the Lord Chancellor, recently told the Royal Commission on Justices of the Peace of the removal of a blind man from the bench; he was as competent as some who had their sight, but a magistrate should be able to obtain an impression from the demeanour of the person before him. There has been one notable case of a magistrate triumphing over this particular disability. Sir John Fielding, the celebrated Bow Street magistrate in the eighteenth century, was blind from birth. First for a while he was associated in the office with his half-brother Henry, and afterwards he succeeded him. He was supposed to know three thousand thieves by their voices and he carried on an incessant war with London's gangsters. He was of a turbulent disposition and his methods did not escape criticism, but he "was generally esteemed a very useful member of society." One score on which he was attacked was that he was so wicked as to admit reporters to his court and even supply them with pen and ink. This, it was said, cruelly exposed the criminals. It is interesting to recall that he tried to get "The Beggar's Opera" suppressed. From the efforts of the Fieldings sprang the beginnings of an effective police force for London. In a contemporary ballad a highwayman is made to declare:

"I went to London one fine day
With my sweet love to see the play,
Where Fielding's gang did me pursue
And I was ta'en by that cursed crew."

The blind magistrate was knighted in 1761. He died in 1780.

JURY'S MINDS

Not long ago a King's Counsel told an Old Bailey jury that "we at the Bar rather wish we could have served on a jury to know how your minds work." Though experience would teach best, rumours occasionally leak out, generally about divers methods of compromise. There is one story about the celebrated turf case of *Wootton* v. *Sievier*, tried by Darling, J. After considering the various racing technicalities involved and the judge's observations thereon the jury decided on their verdict, but the foreman said: "It would be rude to the judge to ignore what he said about short stirrups, but I myself know nothing about racing and I don't intend to air my views in public." Accordingly, they agreed to add a rider to their verdict drawing the attention of the Jockey Club to what the judge had said on the subject of the new seat adopted by jockeys. This returned the responsibility to Darling, who was a keen horseman. Nevertheless, the press failed to notice, or chose not to notice, the form of words used and came out with headlines like "British Jury Teaches Jockeys How to Ride" and "How to Ride Races by Twelve who Don't Know." How verdicts may be unanimously reached and sometimes are is illustrated by a tale told by Atkinson, J., of one juryman who persuaded the others to his opinion, afterwards explaining: "Well, it was eleven to one against me, but I told 'em I would sit there all night till they came round to my way of thinking and as it came near closing time they came round one by one, and it didn't make it any easier for 'em when I brought out me flask and had a swig." The same judge explained those verdicts which sometimes defy judicial direction by the attitude: "Look 'ere, that 'ere ruddy judge thinks it's 'is job to decide this 'ere case. Well, we'll show 'im."

COUNTY COURT LETTER

Notice to Quit Agricultural Land

IN *Mainwaring* v. *Jones*, at Shrewsbury County Court, the claim was for possession of 21 acres of land at Weston Lullingfields. The plaintiff's case was that his father, his predecessor in title, had let the land to the defendant's father-in-law, who had died about 1942, intestate. No sub-tenancy or fresh tenancy in favour of the defendant had been recognised, and rent had only been accepted from him as agent for his father-in-law or his administrator. The land was offered to the defendant in the autumn of 1944, but he would not pay an adequate price. Notice to quit, expiring in February, 1946, was accordingly given. The defendant's case was that his father-in-law gave up farming in 1935, and the rent had since been paid by the defendant. On the defendant's offer being refused, the land had been sold to another farmer, without the consent of the Minister of Agriculture. The notice to quit was therefore void under Defence Reg. 62 (4A). The defendant also relied on the Agricultural Holdings Act, 1923, s. 26 (1). The prospective purchaser, giving evidence on subpœna for the defendant, stated that negotiations for his purchase of the land did not begin until after February, 1946. His Honour Judge Samuel, K.C., held that the notice to quit was valid. An order was made for possession in twenty-eight days, with costs. Compare *Felton* v. *Chester* [1946] W.N. 77.

The Definition of a Fresh Tenancy

IN *Marshall* v. *Hall*, at Boston County Court, the claim was for possession of a cottage, which the plaintiff had bought with vacant possession from the defendant's former employer—a farmer. The defendant had been given notice to quit by his employer, who had afterwards accepted rent on two occasions. The cottage had been "tied" when the defendant occupied it by virtue of his employment as a horseman on the farm. His case was that, although he had ceased to work on the farm, a fresh tenancy had been created by the acceptance of rent after the notice to quit. His Honour Judge Shove observed that the mere payment of some money in respect of an occupation did not create a tenancy, unless there was an intention by the persons concerned that there should be a tenancy. The evidence was that there had been a service occupancy, outside the Rent Acts, and that no fresh tenancy had been created. An order was made for possession in one month. Compare *Morrison* v. *Jacobs* [1945] 1 K.B. 577.

POINTS IN PRACTICE

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Tenancy of bungalow

Q. H and W are married and live together at W's parents' home. He joins the Army, leaving W living with her parents. Without H's knowledge, and while he is serving abroad, W takes a tenancy of a bungalow from L. H is demobilised and lives with W for a while, when she deserts him. W gives notice to quit to landlord. Rent was paid by W out of Army allowance and subsequently a housekeeping allowance. The furniture is H's. The name on the rent book is W's. L knew W was a married woman with a husband serving abroad. Are there any grounds or relevant decisions on which it could be contended by H that he (and not W) is tenant? (For example, was the tenancy a contract for necessaries upon which H would be liable for rent and of which he could claim the benefit as tenant?)

N.B.—If W is tenant H may have certain rights as licensee, but this is not the subject of this inquiry.

A. This case depends upon its own special facts. The question is one of agency. Although W took the tenancy without H's knowledge, she had implied authority to pledge his credit for necessaries, including the provision of a matrimonial home. In spite of W's name being on the rent book as tenant, H can claim to be the tenant (see *Epps* v. *Rothnie* [1945] 1 K.B., at pp. 565 and 566).

War damage contribution

Q. A purchased in 1932 three houses for a total of £630, and at the same time borrowed £700 to pay for the property and for considerable repairs. A also gave as collateral security some leasehold property, which was then worth £900, the ground rent being £6 10s. per annum. On what basis should the proportion of war damage contribution be calculated? Should the value of the properties be aggregated and proportion allowed in respect of prime security only, or should a proportion be allowed in respect of collateral security, too, or, alternatively, should collateral security be ignored altogether?

A. The collateral security should be ignored. The Act provides no machinery for its inclusion in the calculation.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Ridicule as Punishment

Sir,—The note on this subject at p. 535 of your issue of 9th November prompts me to draw attention to s. 180 (4) of the Public Health (London) Act, 1936. This provided—

> " Where a person convicted of an offence under the foregoing provisions of this section has, within twelve months previously, been convicted of such an offence, the court may, if it thinks fit and finds that he knowingly and wilfully committed both such offences, order that a notice of the facts be affixed, in such form and manner, and for such period not exceeding twenty-one days, as the court may order, to any premises occupied by that person, and that he pay the costs of affixing the notice; and . . ."

I have elsewhere suggested that a simplification and extension of this provision might have a salutary effect upon trading habits; but the subsection was, in fact, repealed by the Food and Drugs Act, 1938, Sched. IV, Pt. I. It had been criticised in your contemporary, the *Law Journal* (Vol. 85, p. 274, 16th April, 1938).

Birmingham, 2. G. M. BUTTS.

War-Damaged Houses

Sir,—I was pleased to notice, in your issue of the 9th November, at p. 534, reference to the difficulties of persons who have been deprived of their houses by enemy action.

One point, however, does not seem to be sufficiently in mind.

In many cases there would, at the date of destruction, be mortgages on properties, and although a few building societies have agreed to accept interest at the rate of 2½ per cent. per annum from the time of destruction until the reconstruction of properties in mortgage to them, it is by no means a common practice among building societies and other mortgagees.

If delay in rebuilding goes on much longer, cases will arise where accumulations of interest equal or exceed the amount to be received as a cost-of-works payment, and the unfortunate citizens who had their properties destroyed may well wonder whether they are really getting compensation, or whether building societies and other lenders of money are not, after all, a favoured class who alone will get compensation for income losses, which successive Chancellors have with such consistency stated could not be paid under any war damage scheme.

London, W.C.1. W. T. JONES.

REVIEW

Motor Claims Cases. By LEONARD BINGHAM, solicitor. 1946. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

The modest claims made by the author of this work are more than justified by his achievement. He does not claim that it is a text-book on principles, but it is obviously not a mere collection of cases. Success has crowned the author's efforts to extract from judgments all material principles and observations of value, partly because the book is composed of the working notes of a practitioner accumulated over a period of years. There are few solicitors or counsel who can compete with Mr. Bingham in experience of the class of work dealt with in his book, and in thus delivering over the fruits of his experience he has conferred a lasting boon on the legal profession. The notes of cases are interspersed with practice notes and forms (e.g., on third party procedure, at p. 29) and extracts from relevant statutes and regulations. What is particularly attractive from the practitioner's point of view is the ample guidance given on questions of fact, e.g., skidding, in summaries of reports from *The Times* and even unreported cases. Other questions on which practical experience is valuable, such as the quantum of damages for such matters as disfigurement, loss of limb, loss of expectation of life, and so on, are amply illustrated with lists of amounts awarded in previous cases. It is not often that a practitioner with many years' intensive experience of a subject decides and has it in him to hand over the results of that experience to his fellow-workers. Mr. Bingham deserves the gratitude of his colleagues for succeeding in doing this and their congratulation for creating something that is alive and is more than a mere text-book of dead academic lore.

The Recorder of Guildford Borough Quarter Sessions has fixed 4th January, 26th April, 5th July and 4th October for holding of sessions in 1947.

NOTES OF CASES

COURT OF APPEAL

Sims *v.* Wilson

Morton, Somervell and Asquith, L.JJ.

20th June, 1946

Landlord and tenant—Rent restriction—Alternative accommodation—" Greater hardship "—Burden of proof—Future hardship—Matters to be considered by judge.

Appeal from a decision of Deputy Judge Turner, sitting at Biggleswade County Court.

The plaintiff landlord, having determined the defendant's tenancy of a house, now sued him for possession. The tenant claimed the right to stay on as a statutory tenant under the Rent Restriction Acts. Landlord and tenant occupied houses with similar accommodation, but, whereas the tenant lived alone with his wife, the landlord's house was crowded with members of her family. She desired possession of the tenant's house for her daughter and the latter's husband and child. She had another married daughter and her child living in her house, and that daughter's husband was expected home on his demobilisation. The county court judge refused to make an order for possession, and the landlord now appealed. By s. 3 (1) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the court is not to make an order for possession against a tenant unless it either thinks it reasonable and has power under Sched. I to the Act, or is satisfied that suitable alternative accommodation is or will be available for the tenant. By para. (*h*) of Sched. I the court can make an order for possession without any offer by the landlord of alternative accommodation for the tenant if the court thinks it reasonable and the house is reasonably required by the landlord for occupation by, among others, his daughter; provided that the court is not to make such an order if satisfied that, " having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant," greater hardship would be caused by granting than by refusing an order.

MORTON, L.J., said that, alternative accommodation having been offered to the tenant in the actual house which he was occupying, the first question was whether that was " other accommodation " within the meaning of the proviso to para. (*h*). He felt some doubt on the matter, and would express no opinion on it because, whether or not accommodation in the house whereof possession was sought was " other accommodation," the fact that accommodation in part of that house was offered would clearly be one of the circumstances for the county court judge to take into account. The next question was whether, in so far as the burden of proof might be material, the burden was on the tenant to prove greater hardship from granting than from withholding the order. No authority had been cited on the point. He (his lordship) inclined to the view that the burden was on the tenant. That seemed the natural construction of the proviso; and, further, if the landlord had satisfied the court that the dwelling-house was reasonably required for the occupation of one of the specified persons, it was obvious that some hardship would result to him by refusing to make an order. Once the landlord had brought himself within para. (*h*), it was for the tenant to prove that greater hardship would result from making than from refusing an order. There was evidence here on which the judge could conclude that greater hardship would be caused by making an order. It was argued that he had misdirected himself in various ways. He (his lordship) thought that the tenant's being faced with either storing or selling his furniture if an order for possession were made against him was a circumstance which the judge was entitled to take into account in weighing the question of greater hardship. How much weight was to be given to it depended upon the particular case. In view of *Bumstead* v. *Wood* (1946), 90 SOL. J. 357; 62 T.L.R. 272, the judge had been right to address his mind also to future hardship. The fact that any other accommodation available would not give protection under the Rent Restriction Acts was another circumstance which the judge might take into account, but he would not be right in thinking that unless accommodation within the Acts were provided no order for possession could be made under para. (*h*), and he had not so held. Finally, it was complained that the judge should have made an order for possession subject to the landlord's agreeing to give the tenant alternative accommodation in the house of which possession was sought, tenure of that accommodation to give the same protection as if within the Acts. No doubt, such an order might have been worked out, but it was impossible to say that there had been misdirection because the judge had not suggested that that should be done.

His lordship observed in the course of his judgment that in a case before the court on the 30th March, 1943, Scott, L.J., had said that it was the duty of counsel to take a note of the judgment in the court below, which note, in the absence of one made by the judge himself, should be available for the use of the Court of Appeal in addition to the judge's notes of evidence. He (Morton, L.J.) agreed, and would add that if the parties were represented by solicitors in the court below the solicitors should take a note of the judge's observations and should endeavour to have an agreed note available for the use of the Court of Appeal. If agreement were impossible, the respective notes should be available. The above referred only to the case where the judge made no note of his own judgment.

SOMERVELL, L.J., gave judgment agreeing that the appeal should be dismissed.

ASQUITH, L.J., agreed.

COUNSEL: *Daly Lewis; Neligan.*

SOLICITORS: *Bower, Cotton & Bower*, for *Hartley & Hine*, Hitchin; *Cameron, Kemm & Co.*, for *Chaundler & Son*, Biggleswade.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Scott's Agreement; Scott *v.* Scott

Wynn-Parry, J. 24th October, 1946

Separation agreement—Covenant to pay "expenses of educating children"—Whether expenses at boarding school included.

Adjourned summons.

By cl. 1 (3) of a separation agreement dated the 6th September, 1940, the husband entered into a covenant to provide for the education of the two children of the marriage in the following terms: "That the husband will pay one moiety of the expenses of educating the said S and D in a manner suitable to their station in life." By cl. 2 the wife covenanted: "In consideration of the premises the wife hereby covenants with the husband as follows: (1) That the wife will out of the allowance or otherwise at all future times support and maintain herself, and support, maintain, and bring up and educate in a manner suitable to their position in life and until capable of fully maintaining themselves the said S and D and pay for all such board, lodging, clothes, medical attendance, tuition and other matters as she or the children may require subject as regards education to cl. 1 (3) hereof." The son D was at Oundle School. The school bill contained a charge of £31 for tuition fees and of £30 for house fees, being the expenses of the son at the house where he was a boarder. By this summons the wife asked whether the husband was liable to pay one-half both of the boarding and tuition fees at Oundle School, or only one-half of the tuition fees.

WYNN-PARRY, J., said that *prima facie* the word "educate" in cl. 1 (3) was used in the widest sense of the term. There was nothing limiting it. The word "tuition" appeared to him to be of narrower import than the word "educate." It was an essential aspect of the form of education given by Oundle School that the pupils should reside at the school or in boarding houses. Without residence it was difficult to reap the advantages of the tuition at that school. On the construction of cl. 1 he had come to the conclusion that the husband was under a liability to pay one-half not only of the general tuition expenses, but also of the expenses of "boarding" the boy during the term. That view was supported by *In re Mariette* [1915] 2 Ch. 284, and *In re a Scheme relating to Christ's Hospital* (1889), 15 App. Cas. 172.

COUNSEL: *Wilfrid Hunt; Winterbotham.*

SOLICITORS: *H. B. Wedlake, Saint & Co.; Bentleys, Stokes and Lowless.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Duffield *v.* Great Western Railway Co.

Wrottesley, J. 23rd October, 1946

Emergency legislation—Essential work—Railway fireman—Transfer to lower grade in accordance with contract of employment—Claim to wages at higher rate—Essential Work (General Provisions) Order, 1942 (*S.R. & O.*, 1942, *No.* 1594), *art.* 4 (1).

Action tried by Wrottesley, J.

The plaintiff was employed by the defendant company as a fireman from 1922 to 1943. By a document dated the 5th June, 1923, the plaintiff agreed to conditions of service applicable to his grade of fireman, one of which was that, before being promoted to the grade of engine-driver, a fireman must pass an examination, and that if after three attempts he failed to pass it, the railway company should remove him from the grade of fireman and employ him in some other grade. The plaintiff having failed in three attempts to pass the necessary examination, the company transferred him to other employment in accordance with that condition. The company alleged that the plaintiff had consented to be transferred to the other work and had admitted that the transfer was due to his own fault. The relations of the plaintiff and the company at the material time were governed by the Essential Work (General Provisions) (No. 2) Order, 1942, art. 4 (1) of which provides that in the case of a scheduled undertaking the following provisions shall apply: " . . . (*d*) . . . the person carrying on the undertaking shall in respect of every prescribed period pay to every specified person . . . a sum which is not less than the normal wage for the prescribed period if that person is during the normal working hours (i) capable of and available for work; and (ii) willing to perform any services outside his usual occupation which in the circumstances he can reasonably be asked to perform during any period when work is not available for him in his usual occupation in the undertaking." The plaintiff was in due course promoted from shed-labourer to steam-raiser, but he contended that, although he could reasonably be asked to do the work of a shed-labourer or of a steam-raiser, he was entitled while doing that work to his old wages as a fireman because, under the Order, he was still to be regarded as belonging to the grade of a fireman. He accordingly brought this action claiming the balance of wages at the higher rate. (*Cur. adv. vult.*)

WROTTESLEY, J., said that the practice which had been adopted in reference to the plaintiff was clearly salutary, for a man unwilling or unable to qualify as an engine-driver was not to be permitted to block promotion by occupying the only possible training ground as a fireman. Apart, therefore, from the Order of 1942, the plaintiff had nothing to complain of. The national interest might require that persons should be kept in their employment, even though for part or all of the time they could not be employed at their usual employment. In such a case, the Order of 1942 provided, they must obviously be paid, and should not remain idle if there were work to be done which they might reasonably be asked to do. For all such cases art. 4 (1) (ii) was apt, and the fallacy lay in attempting to apply those provisions to the case of the plaintiff whose job was changed in accordance with the terms of his contract of employment. The Order of 1942 was not concerned with such a case. If the change were not in accordance with the contract, or were a colourable transaction, and therefore in effect a termination of the employment, the courts could doubtless intervene under the Order. The relevant part of the Order did not deal with the rate of pay due to persons performing an ordinary week's work, but only to persons for whom such work could not be found. The Order only tore a contract up which would otherwise contradict the Order. The contract in the present case did nothing of the kind. There would be judgment for the railway company.

SOLICITORS: *Pattinson & Brewer; M. H. B. Gilmour.*

COUNSEL: *Beney*, K.C., and *M. R. Nicholas; Sir Valentine Holmes*, K.C., and *Ashworth.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Whittall *v.* Kirby

Lord Goddard, C.J., Lewis and Oliver, JJ.

12th November, 1946

Road Traffic—Driving under influence of alcohol—Disqualification for holding licence—"Special reasons" for not imposing—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43) *ss.* 11 (3), 15 (2), 35 (2).

Case stated by Birmingham justices.

The appellant, a police inspector, preferred informations against the respondent, charging him with driving a motor lorry on a road when under the influence of drink to such an extent as to be incapable of having proper control of the vehicle, contrary to s. 15 (1) of the Road Traffic Act, 1930, and with driving the vehicle recklessly and in a manner dangerous to the public, contrary to s. 11 (1). He pleaded "guilty" to the charges. On the first charge the justices imposed a fine of £20, and ordered his driving licence to be endorsed with particulars of his conviction. They dismissed the second charge under the Probation of Offenders Act. They did not order that he should be disqualified from holding or obtaining a licence. They were of opinion that the facts (1) that they had no knowledge of any previous motoring convictions against the respondent; (2) that the retention of his licence was essential for obtaining his livelihood; and (3) that they had imposed a substantial monetary penalty for the offence, constituted special reasons, within the meaning of s. 15 (2) of the Act of 1930, for not imposing the penalty of disqualification. The inspector appealed. (*Cur. adv. vult.*)

LORD GODDARD, C.J., in a written judgment, in which Lewis and Oliver, JJ., concurred, said that that was the first occasion on which the question what could amount to special reasons justifying a court in refraining from suspending or, in one case, from endorsing, a licence had arisen in England. Great diversity of opinion and practice prevailed on this subject in courts throughout the country. By ss. 11 (3) and 15 (2) of the Act of 1930, a driver was to be disqualified unless for special reasons the court should think fit to order otherwise. In the present case none of the facts found by the justices could amount to a special reason within the meaning of s. 15 (2). The limited discretion which was to be exercised only for special reasons must be exercised judicially; the reasons must be special, which was the antithesis of general. That a man was a first offender or had committed no motoring offence for many years were reasons of the most general character. That a man was a professional driver could not be called a special reason. Such drivers were more likely to be habitually on the roads than people who drove themselves, so that there was all the more reason for protecting the public against them. The Act contained no indication that Parliament meant to draw any distinction between drivers who earned their living by driving, or who drove for purposes connected with their business, and any other users of motor cars. That serious hardship might result to a lorry driver or a private chauffeur was no doubt true; but, had Parliament intended that special consideration should be shown to professional drivers or first offenders, it would have so provided. In *R.* v. *Crossan* [1939] N.I. 106, the court adopted a test of what could be said to be a special reason, beyond saying that it must be one which was not of a general character, which he (his lordship) had ventured to use in his address to the magistrates assembled at the Summer Assizes for Essex in 1937: he had suggested that the reasons must be special to the offence and not to the offender. The court in Ireland, adopting the suggestion, said that a "special reason" within the exception was one which was special to the facts of the particular case, that was, special to the facts which constituted the offence. It was, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence was not a "special reason" within the exception. He (the Lord Chief Justice) adopted that passage. It was impossible to define everything which could amount to a special reason. Illustrations were a driver exceeding the speed limit because he had suddenly been called to attend a dying relative, or a doctor going to an urgent call. It was difficult to visualise any special reason except the one actually mentioned in s. 11 (3), namely, the lapse of time from the date of a previous conviction, or to see what could amount to a special reason in the case of driving under the influence of drink or drugs. One might be found if the court were satisfied that a drug had been administered to a driver without his knowledge, if, for instance, he had taken a dose of medicine which he believed to be an ordinary tonic, but which was in fact a powerful drug. He thought that exactly the same considerations would apply to s. 35 (2) of the Act of 1930. The driving or permitting the driving of a vehicle when no policy was in force must, he felt, be a disqualification unless the court could find in relation to the particular offence some mitigating circumstance; and the mere forgetfulness or carelessness in not taking out a policy could not amount to a special reason. Finally, he (his lordship) hoped that in future no court would regard the offence of dangerous driving as one suitable for the application of the Probation of Offenders Act, except in the most exceptional circumstances.

COUNSEL: *Gerald Gardiner*. The respondent did not appear and was not represented.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *the Town Clerk*, Birmingham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE NOTE

DOCUMENTS

Copies of any documents for the use of the Court of Appeal, the Chancery and King's Bench Divisions may if the party supplying the same so desires be in photostat.

GODDARD, C.J.
GREENE, M.R.
H. B. VAISEY, J.

14th November, 1946.

THE ACCOUNTANT'S CERTIFICATE RULES, 1946

ON 10th August, 1946, the provisions of s. 1 of the Solicitors Act, 1941, were brought into force by an order of the Lord Chancellor dated 2nd August (S.R. & O., 1946, No. 1651/L.21). That section requires every solicitor (with certain exceptions) to deliver to the Council of The Law Society once in every practice year a certificate by a qualified accountant that the solicitor's books and accounts have been examined and that the Solicitors' Accounts Rules have (or have not) been complied with. To give effect to the section, the Accountant's Certificate Rules, 1946, dated 20th September, 1946, have been made by the Council of The Law Society, and came into force on 16th November.

The duty to produce each year an accountant's certificate does not extend to any solicitor during the currency of his first practising certificate, nor (in general) to retired solicitors or those who are exempt from the Solicitors' Accounts Rules as holders of certain public offices within ss. 4–7 of the Solicitors Act, 1933, provided they are not also engaged in private practice. Solicitors not practising on their own account, and to whom the Solicitors' Accounts Rules are in consequence not applicable, are also relieved of the obligation to submit the annual certificate (r. 6). But it is important to note that the definition of a solicitor for the purpose of the rules does *not* include a firm of solicitors; each member must therefore supply a certificate.

The certificate may be delivered at any time during the practice year, but under s. 1 (5) of the 1941 Act the certificate must ordinarily relate to an accounting period covering not less than twelve months and ending not more than twelve months before the delivery of the certificate. In the case of the practice year beginning on the 16th November, 1946, however, r. 7 allows an accounting period of not less than six months beginning in the normal case on the date at which the books were last made up before 16th November, 1946. The ending date of this first accounting period is not prescribed, and solicitors are therefore free to select a date on which it will be convenient to have their books made up annually (note that future accounting periods must begin at the expiry of the last preceding accounting period: Solicitors Act, 1941, s. 1 (5)).

Rule 4 lays down the scope of the examination which the accountant is required to make. Nothing in the nature of an audit is necessary (and indeed, the difficulty of vouching items would render an audit impracticable in many cases). The accountant's responsibility is limited to a general test examination of the books and bank passbooks, supplemented by a comparison, in respect of at least two dates selected by the accountant, between the liabilities to clients and *cestuis que trustent* as shown by the books, and the balances standing to the credit of the client account on those dates. In the event of the examination disclosing evidence of non-compliance with the Accounts Rules, the accountant is required to make any further investigation necessary to enable him to specify in the certificate the matters as to which he is not satisfied. The relative simplicity of the inspection, provided that the book-keeping has been adequate, should minimise its cost to the solicitor: the penalty of slack book-keeping may well be a heavy bill for putting the accounts in order before the inspection can be made.

The qualifications of accountants empowered to give a certificate are prescribed by r. 3. It will be observed that although the rules affect solicitors practising in England and Wales only, members of certain professional bodies in Scotland may be qualified accountants within the rule The discretion reserved by the Council of The Law Society to disqualify an accountant on certain grounds, mainly in order to protect the Compensation Fund from claims which might have been avoided by vigilance, is noteworthy.

The following is the full text of the rules:—

THE ACCOUNTANT'S CERTIFICATE RULES, 1946

RULES DATED THE 20TH SEPTEMBER, 1946, MADE BY THE COUNCIL OF THE LAW SOCIETY UNDER SECTION 1 OF THE SOLICITORS ACT, 1941 (4 & 5 GEO. 6. CAP. 46) WITH RESPECT TO THE DELIVERY BY SOLICITORS TO THE REGISTRAR OF SOLICITORS OF ACCOUNTANTS' CERTIFICATES.

1. These Rules may be cited as the Accountant's Certificate Rules, 1946, and shall come into operation on the 16th day of November, 1946.

2.—(1) In these Rules the expressions "trust money," "client," "client account" and "client's money" shall have the meanings respectively assigned to them by the Solicitors' Accounts Rules, 1945, but in the case of a solicitor holding one of the offices to which section 4, 5, 6 or 7 of the Solicitors Act, 1933, applies, "client's money" shall not extend to money held or received by him in the course of his employment in such office, or to money paid without delay into an account subject to public or official audit.

(2) Other expressions herein shall have the meanings assigned to them by the Solicitors Acts, 1932 to 1941.

(3) The Interpretation Act, 1889, shall apply to these Rules in the same manner as it applies to an Act of Parliament.

3.—(1) An accountant shall be qualified to give an accountant's certificate on behalf of a solicitor if—

(*a*) he is a Member of—

(i) The Institute of Chartered Accountants in England and Wales, or

(ii) The Society of Incorporated Accountants and Auditors, or

(iii) The Association of Certified and Corporate Accountants' or

(iv) The Society of Accountants in Edinburgh, or
(v) The Institute of Accountants and Actuaries in Glasgow, or
(vi) The Society of Accountants in Aberdeen ; and

(*b*) he has neither been at any time during the accounting period, nor subsequently, before giving the certificate, become, a partner, clerk or servant of such solicitor or of any partner of his ; and

(*c*) he is not subject to notice of disqualification under paragraph (*2*) of this Rule.

(*2*) In either of the following cases, that is to say, where—

(*a*) the accountant has been found guilty by the Disciplinary Tribunal of his professional body of professional misconduct or discreditable conduct, or

(*b*) the Council are satisfied that a solicitor has not complied with the provisions of the Solicitors' Accounts Rules in respect of matters not specified in an accountant's certificate and that the accountant was negligent in giving such certificate, whether or not an application be made for a grant out of the Compensation Fund, the Council may, at their discretion, at any time notify the accountant concerned that he is not qualified to give an accountant's certificate, and they may give notice of such fact to any solicitor on whose behalf he may have given an accountant's certificate, and after such accountant shall have been so notified, unless and until such notice of disqualification shall have been withdrawn by the Council, he shall not be qualified to give an accountant's certificate. In coming to their decision the Council shall take into consideration any observations or explanations made or given by such accountant or on his behalf by the professional body of which he is a member.

4.—(1) With a view to the signing of an accountant's certificate an accountant shall not be required to do more than—

(*a*) make a general test examination of the books of account of the solicitor ;

(*b*) ascertain whether a client account is kept ;

(*c*) make a general test examination of the bank passbooks and statements kept in relation to the solicitor's practice ;

(*d*) make a comparison, as at not fewer than two dates selected by the accountant between—

(i) the liabilities of the solicitor to his clients and, if trust money has been paid into the client account under the Solicitors' Trust Accounts Rules, to the *cestuis que trustent*, as shown by his books of account ; and

(ii) the balances standing to the credit of the client account ; and

(*e*) ask for such information and explanations as he may require arising out of (*a*) to (*d*) above.

(*2*) If after making the investigation prescribed by paragraph (1) of this Rule, it appears to the accountant that there is evidence that the Solicitors' Accounts Rules have not been complied with, he shall make such further investigation as may be necessary to enable him to sign the accountant's certificate.

5. An accountant's certificate delivered by a solicitor under these Rules shall be in the form set out in the Schedule to these Rules or in a form to the like effect approved by the Council.

6. The Council will in each practice year be satisfied that the delivery of an accountant's certificate is unnecessary, and shall not require evidence of that fact, in the case of any solicitor who—

(1) holds his first current practising certificate ; or

(2) after having for twelve months or more ceased to hold a current practising certificate, holds his next current practising certificate ; or

(3) holds a current practising certificate after having, in the declaration lodged by him with the Registrar to lead to the issue of that practising certificate, declared that either—

(*a*) the Solicitors' Accounts Rules did not apply to him because he had not, during the period to which such declaration referred, practised on his own account either alone or in partnership or held or received client's money ; or

(*b*) he was exempt from complying with the Solicitors' Accounts Rules by virtue of holding one of the offices to which section 4, 5, 6 or 7 of the Solicitors Act, 1933, applies and had not, during the period to which such declaration referred, engaged in private practice ; or

(4) has ceased to hold a current practising certificate and, if he has at any time after the 15th day of November, 1945, held or received client's money, has delivered an accountant's certificate covering an accounting period ending on the date upon which he ceased to hold or receive client's money ; or

(5) has at no time since the 15th day of November, 1945, held a current practising certificate or held or received client's money.

7. The accounting period specified in an accountant's certificate delivered during the practice year beginning on the 16th day of November, 1946, shall begin on—

(1) the date to which the solicitor's books were last made up before the 16th day of November, 1946 ; or

(2) if the books were not made up during the practice year beginning on the 16th day of November, 1945, either the 16th day of November, 1945, or the day upon which the solicitor first began or began again to hold or receive client's money, whichever be the later ;

and shall cover not less than six months or, in the case of a solicitor retiring from practice who has ceased to hold or receive client's money after the 15th day of November, 1945, the period up to the date upon which he so ceased.

8. In any practice year beginning on or after the 16th day of November, 1947—

(1) in the case of a solicitor who—

(*a*) becomes under an obligation to deliver his first accountant's certificate, or

(*b*) having been exempt under Rule 6 of these Rules from delivering an accountant's certificate in the preceding practice year, becomes under an obligation to deliver an accountant's certificate,

the accounting period shall begin on the date upon which he first held or received client's money or, after such exemption, began again to hold or receive client's money, and may cover less than twelve months, and shall in all other respects comply with the requirements of subsection (5) of section 1 of the Solicitors Act, 1941 ; and

(*2*) in the case of a solicitor retiring from practice who, having ceased to hold or receive client's money, is under an obligation to deliver his final accountant's certificate, the accounting period shall end on the date upon which he ceased to hold or receive client's money, and may cover less than twelve months, and shall in all other respects comply with the requirements of subsection (5) of section 1 of the Solicitors Act, 1941.

9.—(1) In any practice year beginning on or after the 16th day of November, 1947, in the case of a solicitor who—

(*a*) was not exempt under Rule 6 of these Rules from delivering an accountant's certificate in the preceding practice year ; and

(*b*) since the expiry of the accounting period covered by such accountant's certificate has become, or ceased to be, a member of a firm of solicitors ;

the accounting period may cover less than twelve months and shall in all other respects comply with the requirements of subsection (5) of section 1 of the Solicitors Act, 1941.

(*2*) In the case of a solicitor who has two or more places of business—

(*a*) separate accounting periods, covered by separate accountants' certificates, may be adopted in respect of each such place of business, provided that the accounting periods comply with the requirements of subsection (5) of section 1 of the Solicitors Act, 1941, and with these Rules ; and

(*b*) the accountants' certificate or accountants' certificates delivered by him to the Registrar in each practice year shall cover all client's money held or received by him.

10. Every notice to be given by the Council under these Rules to a solicitor shall be in writing under the hand of the Secretary and sent by registered post to the last address of the solicitor appearing in the Roll or in the Register kept by the Registrar under subsection (2) of section 37 of the Solicitors Act, 1932, as amended and re-enacted by section 7 of the Solicitors Act, 1941, and, when so given and sent, shall be deemed to have been received by the solicitor within forty-eight hours of the time of posting.

11. Every notice to be given by the Council under these Rules to an accountant shall be in writing under the hand of the Secretary and sent by registered post to the address of the accountant shown on an accountants' certificate or appearing in the records of the accountancy body of which the accountant is a member, and, where so given and sent, shall be deemed to have been received by the accountant within forty-eight hours of the time of posting.

12. The Council shall have power to waive in writing any of the provisions of these Rules, other than those of paragraph (*2*) of Rule 3, in any particular case.

THE SCHEDULE

FORM OF ACCOUNTANT'S CERTIFICATE

1. In compliance with section 1 of the Solicitors Act, 1941, and the Accountant's Certificate Rules, 1946, made thereunder, I (*a*) . . . . . , have examined the books, accounts and documents of (*b*) . . . . . or his firm (*c*), in respect of his practice(s) (*c*) { in partnership under the style of (*d*) / alone under the style of (*d*) } at (*e*) . . . . . for the accounting period, beginning on the . . . . . day of . . . . . 19 . . , and ending on the . . . . . day of . . . . . 19 . . .(*f*)

2. I certify that from my examination of the books, accounts and documents relating to the above practice(s) produced to me and from the information and explanations given to me I am satisfied that—

(1) during the accounting period the said (*b*) . . . . . , has complied with the provisions of the Solicitors' Accounts Rules, except so far as concerns

(*g*) certain trivial breaches of the Solicitors' Accounts Rules, due to clerical errors or mistakes in book-keeping, all of which

Notes.—(*a*) State the full name, firm name (if any), the address and professional qualifications of the accountant.
(*b*) State the full name of the solicitor in respect of whom the certificate is given.
(*c*) Delete as necessary.
(*d*) State the firm name or names of the solicitor.
(*e*) State the business address or addresses of the solicitor to which the certificate refers.
(*f*) The accounting period to be covered by the certificate must comply with subsection (5) of section 1 of the Solicitors Act, 1941, and with the Accountant's Certificate Rules, 1946.
(*g*) *One or other or both* of the alternative sub-paragraphs marked (*g*) must be deleted. If the second alternative is allowed to stand a detailed note of all breaches of the rules should be endorsed on the certificate.

were rectified on discovery. I am satisfied that none of such breaches resulted in any loss to any client ;

(*g*) the matters set out on the back hereof ; and

(2) (*c*) having retired from active practice as a solicitor, the said (*b*)

ceased to hold client's money on the day of 19 .(*h*)

Dated this day of 19 .

(*Signature*).....

To The Registrar of Solicitors,
Law Society's Hall,
Chancery Lane, W.C.2.

(*h*) Where clause 2 (2) applies, this date must be the ending date of the accounting period as given at the end of clause 1.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

GREENWICH HOSPITAL BILL [H.L.] [13th November.

To repeal certain restrictions on the amount of special Greenwich Hospital pensions and of expenditure out of Greenwich Hospital funds for the education and maintenance of children, and to make further provision for the granting out of those funds of widows' pensions, children's allowances and gratuities to dependants.

TRUSTEES' SAVING BANKS BILL [H.L.] [13th November.

To make further provisions as to the superannuation benefits of officers of trustees' savings banks and of the Inspection Committee, and to empower all trustees' savings banks to make advances for the extension or promotion of other such banks.

HOUSE OF COMMONS

Read First Time :—

AGRICULTURAL WAGES (REGULATION) BILL [H.C.].

To transfer functions of agricultural wages committees to the Agricultural Wages Board and to the Scottish Agricultural Wages Board ; to make further provision as to the fixing, cancelling and varying of minimum rates of agricultural wages, as to learners employed in agriculture, and as to agricultural workers disabled from earning the minimum rate of wages ; to remove restrictions on the holidays which may be granted to agricultural workers under the Holidays with Pay Act, 1938 ; to extend the definition of " agriculture " in the enactments relating to the regulation of agricultural wages ; and for purposes connected with the matters aforesaid. [13th November.

EXCHANGE CONTROL BILL [H.C.].

To confer powers, and impose duties and restrictions, in relation to gold, currency, payments, securities, debts, and the import, export, transfer and settlement of property, and for purposes connected with the matters aforesaid. [13th November.

EXPIRING LAWS CONTINUANCE BILL ([H.C.].

To continue expiring laws. [15th November.

MINISTRY OF DEFENCE BILL [H.C.].

To make provision for the appointment and functions of a Minister of Defence, and for purposes connected therewith. [13th November.

OUTLAWRIES BILL [H.C.] [12th November.

For the more effectual preventing Clandestine Outlawries.

ROAD TRAFFIC (DRIVING LICENCES) BILL [H.C.].

To revoke certain emergency provision as to licences to drive motor vehicles, and make provision with respect to the grant of such licences to persons who have held such licences under the emergency provision ; and to amend the law as to the destination of fees in respect of driving tests. [15th November.

UNEMPLOYMENT AND FAMILY ALLOWANCES (NORTHERN IRELAND) AGREEMENT BILL [H.C.].

To confirm and give effect to an agreement made between the Treasury and the Ministry of Finance for Northern Ireland with a view to assimilating the burdens on the Exchequer of the United Kingdom and the Exchequer of Northern Ireland in respect of social insurance and allied services. [13th November.

A rent tribunal has been set up from Wednesday, 13th November, covering Plymouth, Salcombe, Torpoint and Looe and the rural districts of Kingsbridge and Plympton St. Mary. Its offices will be at the Masonic Hall, Elliot Street, Plymouth. Members are : Mr. B. H. Chowen (chairman) ; Mr. J. J. Richards (reserve chairman) ; Mr. M. Light. Reserve member is Mrs. L. M. Parker, and the clerk is Mr. A. C. Powell. This is the forty-fifth tribunal to be set up under the Furnished Houses (Rent Control) Act. A further order has been made adding the rural district of Kettering to local authorities covered by the tribunal for the Bedford area.

NOTES AND NEWS

Notes

At a meeting of the Law Students' Debating Society held at the Law Society's Court Room, on Tuesday, 12th November, 1946 (Chairman, Mr. P. H. North Lewis), the subject for debate was " That this House deplores the present tendency of the Trades Unions to abuse their powers." Mr. L. E. Long opened in the affirmative, Mr. D. J. Humfrey-Davis opened in the negative. The following members also spoke : Miss R. Eldridge, Messrs. G. C. Heseltine, A. M. S. Neave, H. S. Law, H. T. Bett, E. C. Jones, F. D. Kennedy, M. C. Batten, C. M. Noel, A. H. Simpson, E. D. Syson, R. Watson, J. E. Terry. The opener having replied, the motion was carried by seventeen votes. There were thirty members and sixteen visitors present.

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 11th November, with Mr. R. J. Kent in the chair. Mr. H. Wentworth Pritchard proposed : " That this House would welcome legislation to implement the Report of the Rushcliffe Committee on Legal Aid." Miss B. A. Bicknell opposed. There also spoke : Messrs. E. D. Smith, C. H. Pritchard, G. C. Rafferty and O. T. Hill. Mr. Wentworth Pritchard replied and the motion was carried by three votes.

This debating society is holding meetings in the Barristers' Refreshment Room, Lincoln's Inn, W.C.2, on Mondays. The subjects for debate in December will be : 2nd December, " That football pools are an evil influence." 9th December, " That the United States of America is an influence for the good of civilisation." 16th December, " That divorce by consent should be permitted." Those interested are asked to communicate with the Secretary, Mr. Oscar T. Hill, 9 Cavendish Square, W.1 (Langham 3373).

It is regretted that, in the report in our issue of 16th November of the rent tribunal covering Brighton, Hastings and neighbouring coastal areas, the name of " W. A. Dell," as member and reserve chairman, was reproduced from a Ministry of Health circular. The name should have been that of Mr. Wilfred Lawson Dell, who retired last year after twenty-four years as Registrar of the Mayor's and City of London Court, and who still sits as a Deputy Registrar on occasions.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1672. **Coroner, England.** Districts (East Riding of Yorks) Order. October 14.

No. 1820. **Essential Work** (Agriculture) (Scotland) Order (Revocation) Order. November 7.

No. 1787. **Exchange of Securities** (No. 2) Rules. November 4.

No. 1800. **Industrial Assurance and Friendly Societies** (Determination of Emergency Provisions) Order. November 6.

No. 1887. **Relief from Double Excess Profits Tax** (Travancore) Declaration. November 6.

No. 1790. **Savings Banks** (Limits of Deposits) Order. November 5.

No. 1823. **Seizure of Food** Order. November 8.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., Nov. 25	Mr. Jones	Mr. Blaker	Mr. Andrews
Tues., ,, 26	Reader	Andrews	Jones
Wed., ,, 27	Hay	Jones	Reader
Thurs., ,, 28	Farr	Reader	Hay
Fri., ,, 29	Blaker	Hay	Farr
Sat., ,, 30	Andrews	Farr	Blaker

Date.	Group A. Mr. Justice Roxburgh *Witness.*	Mr. Justice Wynn-Parry *Non-Witness.*	Group B. Mr. Justice Evershed *Non-Witness.*	Mr. Justice Romer *Witness.*
Mon., Nov. 25	Mr. Hay	Mr. Farr	Mr. Reader	Mr. Jones
Tues., ,, 26	Farr	Blaker	Hay	Reader
Wed., ,, 27	Blaker	Andrews	Farr	Hay
Thurs., ,, 28	Andrews	Jones	Blaker	Farr
Fri., ,, 29	Jones	Reader	Andrews	Blaker
Sat., ,, 30	Reader	Hay	Jones	Andrew